

Message Text

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TO AMEMBASSY BONN IMMEDIATE

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C O N F I D E N T I A L STATE 166421

E.O. 11652: GDS

TAGS: PFOR, PGOV, WB, GW, US, UK, FR

SUBJECT: FEDERAL PROSECUTION OF LORENZ KIDNAPPERS IN
BERLIN

REF: BERLIN 9953 (NOTAL), BONN 9891, BONN 9562, STATE 44118

1. DEPARTMENT HAS GIVEN FULL CONSIDERATION TO LEGAL AND
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POLITICAL ARGUMENTS CONCERNING WHAT THE USG POSITION SHOULD

BE ON THE PROSECUTION IN BERLIN BY THE FRG PROSECUTOR GENERAL OF THE LORENZ KIDNAPPERS, INCLUDING THOSE CONSIDERATIONS SET FORTH IN BONN 9953 (NOTAL).

2. WE ARE AWARE OF THE INEVITABLE NEGATIVE REACTION OF THE SOVIETS TO THIS FEDERAL PROSECUTION IN BERLIN. WE BELIEVE THIS CONSIDERATION IS OUTWEIGHED BY OUR LEGAL OPINION THAT THIS FEDERAL PROSECUTION IN BERLIN WOULD BE CONSISTENT WITH THE QA AND, AT LEAST AS IMPORTANT, BY OUR POLITICAL JUDGMENT THAT TO BLOCK IT WOULD BE VIEWED BY THE FRG AS WILLINGNESS OF THE ALLIES TO CHANGE THE EXISTING SITUATION IN BERLIN AS A RESULT OF SOVIET PRESSURE.

3. ACCORDINGLY, WE BELIEVE THAT THE US JUDGMENT MUST BE NOT, REPEAT NOT, TO STAND IN THE WAY OF FEDERAL PROSECUTION IN BERLIN. HOWEVER, DEPARTMENT'S MAJOR INTEREST, AND ONE WHICH WE BELIEVE UNDERLIES THE FRENCH CONCERN, IS THAT AN EVENTUAL FEDERAL PROSECUTION IN BERLIN BE HANDLED IN A LOW-KEY FASHION SO AS TO AVOID THE APPEARANCE OF A POLITICAL DEMONSTRATION VIS-A-VIS THE SOVIETS. THIS MAY BE DIFFICULT TO ACHIEVE WITH BUBACK LEADING THE PROSECUTION, GIVEN HIS PROPENSITY TO MAKE UNFORTUNATE PUBLIC STATEMENTS.

4. THUS, IN CONNECTION WITH FORMAL APPROVAL TO THE FRG OF FEDERAL PROSECUTION IN BERLIN, WE BELIEVE THAT IT IS NECESSARY TO BRING OUR CONCERNS HOME TO THE FRG IN THE STRONGEST POSSIBLE TERMS. WE BELIEVE THIS WOULD BEST BE DONE BY AMBASSADOR HILLENBRAND AT AN APPROPRIATE LEVEL IN THE FOREIGN MINISTRY, PROBABLY VAN WELL, ALONG THE LINES OF THE FOLLOWING TALKING POINTS:

--THE US IS SYMPATHETIC TO THE FRG DESIRE TO PROTECT THE PRINCIPLE THAT FEDERAL PROSECUTIONS MAY CONTINUE TO TAKE PLACE IN BERLIN;

--IT IS STRONGLY IN THE INTEREST OF THE FRG, AS WELL AS OF THE ALLIES, THAT THE FEDERAL PROSECUTION OF THE JUNE 2 MOVEMENT MEMBERS, IF IT TAKES PLACE IN BERLIN, BE HANDLED IN A LOW-KEY FASHION AND AVOID THE APPEARANCE OF A POLITICAL DEMONSTRATION;
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--TO THIS END, THE US DOUBTS THE WISDOM OF HAVING FEDERAL PROSECUTOR BUBACK LEAD THE PROSECUTION IN BERLIN PERSONALLY. HIS RANK ALONE, COMBINED WITH THE FACT THAT IT HAS NOT BEEN CUSTOMARY FOR THE FEDERAL PROSECUTOR GENERAL TO LEAD TERRORIST PROSECUTIONS IN THE FRG, WOULD INEVITABLY DRAW ATTENTION TO HIS ROLE. FURTHERMORE, HIS INCLINATION TO MAKE UNFORTUNATE PUBLIC STATEMENTS WHICH HAVE BEEN THE

SUBJECT OF SOVIET PROTEST IN THE PAST CAUSE US TO QUESTION
THE ADVISABILITY OF HIS PERSONAL INVOLVEMENT IN AN EVENTUAL
TRIAL;

--THE US THEREFORE BELIEVES IT WOULD BE ADVANTAGEOUS IF
THE CASE WERE TO BE HANDLED BY ONE OF BUBACK'S SUBORDINATES,
PREFERABLY FROM THE FEDERAL PROSECUTOR'S OFFICE IN BERLIN;

--WHATEVER THE FRG'S JUDGMENT ON THESE QUESTIONS, I BELIEVE
IT WOULD BE ESSENTIAL THAT A CERTAIN RESTRAINT BE SHOWN BY
MEMBERS OF THE FEDERAL PROSECUTOR'S OFFICE, PARTICULARLY
WITH REGARD TO THEIR STATEMENTS TO THE PRESS. I REALIZE
THIS MAY BE A SENSITIVE MATTER FOR THE FRG, BUT IT COULD
BE JUSTIFIED, IF NECESSARY, ON THE GROUNDS THAT FEDERAL
PROSECUTORS ACTING IN BERLIN HAVE A RESPONSIBILITY TO THE
ALLIES;

--WE ARE WILLING TO WORK WITH THE FEDERAL GOVERNMENT AND
WITH THE BRITISH AND THE FRENCH TO ACHIEVE A REASONABLE
SOLUTION TO THIS PROBLEM.

4. DEPARTMENT WILL RAISE SIMILAR CONCERNS WITH FRG
EMBASSY HERE. US BONN GROUP REPRESENTATIVE SHOULD
ALSO MAKE THE ABOVE POINTS WHEN INFORMING BONN GROUP
OF US APPROVAL OF FEDERAL PROSECUTION IN BERLIN. KISSINGER

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